

EXPERT WITNESS REPORT

OF

JONATHAN C. NEHMER, AIA

March 5, 2020

Introduction

Jonathan C. Nehmer, AIA has been retained by Lee/Shoemaker, LLC as a standard of care expert in the litigation currently pending before the United States District Court, Eastern District of Virginia, Richmond Division, captioned Tzann Fang, MD v. Hyatt Corporation, and Helix Electric, Ins; and Hyatt Corporation and Tysons Corner Hotel I, LLC v. Harvey-Cleary Builders, CallisonRTKL Inc., Blum Engineers, Inc., Johnson Controls, Inc. (f/k/a Tyco Simplex Grinnell) and Code Consultants, Inc..

Jonathan C. Nehmer, AIA has been asked to review correspondence, drawings and other documents relating to the designed locations of the Smoke Detector, Fire Alarm Device and Sprinkler Head in the typical guestrooms of the Hyatt Regency Hotel, Tysons Corner, Virginia and then render an expert opinion relating to Standard of Care in the services performed by CRTKL.

Qualifications

This report was prepared by Jonathan C. Nehmer, AIA. Mr. Nehmer is a licensed architect and is an expert in the development, design, renovation and construction of hospitality projects. Mr. Nehmer founded the Architecture and Project Management firm of Jonathan Nehmer + Associates, Inc. with offices in Rockville, Maryland and other locations around the country. He was also Managing Principal of HVS Design (Interior Design) from its inception through 2019. He is a past Vice President of the Potomac Valley Chapter of the American Institute of Architects and former member of the International Society of Hospitality Consultants (ISHC).

Mr. Nehmer has over 40 years of experience as an Architect, Designer and Owner's Representative for hospitality industry projects. In addition to hotel, commercial, institutional, and residential design, Mr. Nehmer has extensive experience in all phases of construction. He has managed construction from the feasibility, bidding and negotiation stage through the ordering and installation of FF&E and the ultimate completion of the project. His proven abilities in construction as well as design give him

the unique qualifications to provide total Design and Construction Project Management services for the client. These services include negotiating and directing the contracts for the design, construction, purchasing, and installation of new hotel development, as well as renovations and reconstructions. Specifically relevant to this report, over the course of his career, Mr. Nehmer has participated in many Model Guestroom Reviews with the design team, ownership and hotel brand team to review quality standards for construction, placement of furniture, locations of mechanical, electrical and plumbing fixtures as well as to obtain approval and sign off from the entire project team to ensure that all aspects of the typical guestroom is finalized prior to implementation.

Mr. Nehmer started his career in hospitality design and construction in 1978 when he went to work for the Marriott Corporation in their Architecture and Construction department. He worked on restaurants, hotels and resorts from 1978 through 1984, rising to the position of Senior Project Coordinator. In 1984, he left Marriott for a position at Ramada, Inc. as Director of Design and Construction for the Eastern United States. In 1985, Mr. Nehmer was promoted to Vice President of Design and Technical Services with responsibility for all Architectural and Interior Design for all of the Ramada family of hotels. Mr. Nehmer left Ramada, Inc. in 1989 and founded Jonathan Nehmer + Associates, Inc. in Rockville, Maryland to provide independent Design, Architecture, Cost Consulting and Project Management services to his clients.

Mr. Nehmer has also provided litigation support services as an expert witness on several hotel projects for claims relating to design and construction activities. His expert witness work includes research and site visits to properties for the preparation of reports, as well as depositions and testimony at trial.

He has also conducted Due Diligence inspections, Property Condition Assessments and studies of numerous existing and planned properties to determine the design and construction scope of work required. This included preparing program requirements, schedules, budgets & phasing for new construction and renovations or investigations into best use recommendations.

Mr. Nehmer also co-authored Cap-Ex 2007 a Study of Capital Expenditures in the Hotel Industry published by the International Society of Hospitality Consultants and also participated in the updated study released in 2014. In 2009, Mr. Nehmer and his team at JN+A created the first Hotel Cost Estimating Guide, a comprehensive guide that provides rule of thumb ranges of costs for various levels of renovation in six hotel tiers. This highly detailed cost guide quickly became popular with hoteliers as the ultimate reference in planning for renovations.

Mr. Nehmer received his Bachelor of Architecture degree from the University of Maryland in 1975, and he is a member of the American Institute of Architects and past member of the International Society of Hospitality Consultants. He also holds a certification from the National Council of Architectural Registration Boards.

Statement of Expert Opinions

In reviewing this case for Standard of Care, I reviewed the following documentation relating to the placement of the life safety devices in the typical guestrooms. There were several iterations of guestroom elevations that showed the proposed design intent for the Fire Alarm Device (FA), the Smoke Detector (SD) and the Sprinkler Head (SH) locations as submitted by the design team.

- The earliest design intent drawing that I viewed was Drawing ID5.33, Revision #2, Dated March 29, 2013, which showed the design intent of having the Sprinkler Head centered on the Bathroom wall (equal distance between both side walls) and the Smoke Detector and Fire Alarm Device both located in close proximity to the sprinkler head.
- Subsequent to that drawing, several clarifications were issued (Revision #7 Rev. Permit Set, and Revision #8) to show the SD located a minimum of 3' away from the Sprinkler Head in a location closest to the entry Foyer and the FA located a minimum of 3' away from the Sprinkler Head in a location closest to the bathroom door. Revision #8 was in response to the July 16, 2014 Harvey-Cleary RFI 527R, asking for mounting heights for the Fire Alarm Devices. The Design team responded on July 25, 2014 with information provided by J. Higginbotham from the Interior Design firm of Looney & Associates. They subsequently issued HCCD-044 (Revision #8 to the guestroom elevation drawings showing mounting heights), Dated July 30, 2014.
- There were also two undated photos of the typical K1 room and the typical DQ2 room that showed the existing locations of the Fire Alarm & Smoke Detector. Based on these photos, in actuality, the as-built locations of the Fire Alarm Device and the Smoke Detector, were not installed in accordance with the design intent as shown by CRTKL in drawing ID 5.33 Revised Permit Set, Dated March 5, 2014.
- Referencing the contract between RTKL and their client, Tysons Hotel I, LLC, there are several sections that define the standard of care that is required of RTKL under the contract.
 - In section 1.3, Performance Standard, "The Architect shall at all times perform its obligations under this Agreement in an efficient and economical manner consistent with Owner's best interests as made known to the Architect by Owner and with the level of care, skill, practice and judgement exercised by other professional consultants performing services of a similar nature under similar circumstances in the area in which the Project is located..." This is the Standard of Care per the Agreement between RTKL and their client.

- In section 2.8, Construction Means, Methods and Safety, the Standard of Care (section 1.3) is also referenced. This section specifically notes that the contractors shall be responsible for the “supervision, implementation and enforcement relating to construction means, methods, sequences, techniques, procedures or related matters involving health, safety of persons or protection of property at the site during construction.”
 - 2.9.4 Contractor Responsibility, also references the performance standard noting that the contractor is responsible for complying with the contract documents and that the Architect under the Performance Standard is not liable for recommending or not recommending rejection of work if the determination by the Architect is exercised in good faith and in accordance with the standard of care (section 1.3).
- I reviewed the contract between RTKL and Blum Engineering with regard to the scope of services required by Blum Engineering. The contract references Exhibit “C”, which is the Blum Scope of Services as outlined in a proposal format from Blum to RTKL on November 21, 2011. In that scope of services, Blum is required to consult regarding MEP concepts in each phase of the work (Concept Design, Schematic Design, Design Development phases). In the construction phase, Blum is required to review shop drawings/submittals and provide assistance in interpreting Construction Documents. In section titled “assumptions/clarifications”, item #9, Blum’s scope of work specifically notes that “Basic Services for Fire Protection includes design and documentation of major piping distribution, along with Performance Specifications for the remainder of the system complete. Balance of the design and documentation is to be performed by the Fire Protection Contractor.” Thus Blum’s services were to prepare performance specifications for the Fire Protection Contractor. The Fire Protection Contractor was responsible for the design and documentation of the final system.
- I also reviewed Blum’s Electrical Drawing E 0.01, Revision #4 prepared by Blum Engineers, dated January 29, 2013, which is part of submission H-CCD-002. In General Fire Alarm Notes, note #1, it states that “Fire Alarm devices & notes shown on the drawings provided to indicate system intent only. The Fire Alarm Contractor must be licensed by the State and shall be responsible for the required system design including providing all required devices and system components necessary for a complete code compliant Fire Alarm system. Any devices or system components required to meet all applicable codes not shown on these drawings shall be deemed implicitly required of the contractor to provide. The contract required submittals shall only be submitted for engineering review after the contractor has received written approval of the fire alarm system from the local authority having jurisdiction.”
- The other design contract that I reviewed was the contract between RTKL and Code Consultants, Inc. (CCI), dated February 15, 2012. The contract references

Exhibit "C", which is the CCI Scope of Services as outlined in letter format from CCI to RTKL on November 23, 2011. In that letter, CCI is to provide code consulting services for the hotel. The Scope of Services notes that the services that CCI is to provide is "code consultation throughout the hotel tower", as well as "a draft Fire Protection and Life Safety Analysis documenting the fire protection and life safety criteria...". Throughout the proposal, CCI references their services as providing "concepts" and "consultation". Preparation of fire alarm design specifications and drawings are not part of their basic services, nor is preparation of life safety plans for construction document permit submission

- I also reviewed sections of the General Conditions to the construction contract between Harvey-Cleary Builders and the ownership group (Exhibit B to the contract). Under General Conditions section 1.2, Correlation, Interpretation and Intent of the Contract Document, Sub sections 1.2.1 and 1.2.2 note the responsibilities of the contractor to provide a completed project. Sub Section 1.2.12 states that the drawings and diagrams for mechanical, plumbing, electrical, fire sprinkler, fire alarm and low voltage work shall be considered as diagrammatic only "Thus the burden falls on the contractor to provide a completed code complying project." "Diagrammatic" would mean a graphic representation of the item, rather than the actual and final design and specification of the item. The contractor and his electrical and fire protection subcontractors would still have the obligation to take the diagrams and designs and create a code complying finished fire alarm system as stated in the contractor's contract. The diagrams and other information prepared by the design team, including interior elevations and answering of requests for information was more than sufficient information for the contractor to complete their obligations under the contract.

In addition to review of drawings and specifications and general conditions, I also reviewed correspondence in the form of emails between various members of the project team.

- In the 8/15/2014 email string between CRTKL Architect Kristen Vican, Dennis Krock, Sr. PM with Code Consultants, Inc., and Harvey-Cleary Builders Project Manager, Sean Lindenmuth, and Tom Seybold from Woodbine Development Corporation, it is noted by both Ms. Vican and Mr. Krock that the locations used by Harvey-Cleary do not match the information submitted to them by CRTKL and are not in accordance with the direct interpretation of the NRPA 13. It is further noted that the construction team has switched the locations of the Smoke Detector and the Fire Alarm Device. Later in these emails, Harvey-Cleary agrees to change them back to the locations shown in the design intent.
- In their January 30, 2020 preliminary report, Robson Forensics confirmed the fact that the Electrical contractor, Helix Electric, failed to install the smoke detector in accordance with the design intent drawings causing the smoke detector to be in a position to be activated by steam from the shower.

The information that I reviewed demonstrates that CRTKL and their consultants, Blum Engineering and Code Consultants, Inc., sent information to Harvey-Cleary builders regarding the design intent of where to locate the Fire Alarm, Smoke Detector and Sprinkler Heads in all typical guestrooms. They did this on several occasions and answered requests for information whenever it was asked by the contractor and their sub-contractors. Harvey-Cleary and their sub-contractors, however, did not locate these referenced devices in the locations stated by CRTKL in their drawings and in written correspondence.

Further, as stated in the General Conditions of the construction contract, the location drawings submitted by CRTKL and their consultants were schematic in nature and to be used for design intent. Responsibility for providing a fully code compliant Fire Alarm system, consistent with the design intent, rested with the contractor and their electrical and mechanical sub-contractors, who must satisfy the authority having jurisdiction regarding the final locations of these devices.

Based on all of the information that I reviewed, it is my professional opinion that CRTKL and their consultants met the standard of care required by their contract, and submitted to the contractor (Harvey-Cleary Builders) and their sub-contractors, all of the appropriate information that was necessary for the contractor to design, supply and install a fully code compliant fire alarm system.

Documents Reviewed and/or Relied Upon

1. ID5.33 Revision #2, dated 3/29/2013
2. ID5.33 Revision #7, Rev. Permit Set, dated 3/5/2014
3. ID5.33 Revision #8, HCCD-044, Dated 7/30/2014
4. 7/25/2014 RFI Answer from Looney & Associates referencing ID5.33, Revision #8.
5. Email String - 8/13/2014 4:49 PM to 8/15/2014 11:32 AM Email string between Kristen Vican- CRTKL, Dennis Krockner from Code Consultants Inc., Sean Lindenmuth- HC Builders,
6. Robson Forensics Engineers Preliminary Report, dated January 30, 2020 prepared by Daniel Ebersole, P.E.
7. NFPA 13, Automatic Sprinkler Systems Handbook 2010, section 8.10.7.1.4, Obstructions and Table 8.10.7.1.4 Positioning of Sprinklers to Avoid Obstructions Along the wall for Residential Sidewall Sprinklers.

8. Email String – August 15, 2014 11:38 AM to August 14, 2014, 11:43 AM. Emails between Jeff Guy, Pete Torres, Sean Lindenmuth, and others regarding Harvey-Cleary not following directions on the fire alarm system in the guestrooms.
9. Email String – July 17, 2014, 3:06 PM to July 24, 2014, 4:03 PM. Emails between Dennis Krockner at CCI, Mary Hibbs at RTKL, Sergio Merino at HC Builders, Kristen Vican at RTKL, & Ron Hunt at Capitol Sprinklers regarding information on how to locate the SD, FA and Sprinkler Head in typical guestrooms.
10. Email String – June 19, 2014 between Jenna Higginbotham and Jeff Guy and at Harvey-Cleary and Kristin Vican at RTKL regarding mounting heights of Fire Alarm Devices including revised mounting height sketches.
11. Contract between RTKL and Tysons Corner Holdings, dated January 23, 2012.
12. Contract between RTKL and CCI for all Building Life Safety & Accessibility Code Consulting, dated February 15, 2012 with attached Scope of Services letter from CCI to RTKL dated November 23, 2011.
13. Contract between RTKL and Blum Engineering for MEP engineering services dated February 15, 2012 with attached Scope of Services letter from Blum Engineering dated November 21, 2011.
14. Contract between Harvey-Cleary Builders & Tysons Corner Hotel I, LLC, dated February 27, 2013.
15. Exhibit “B” General Conditions to the Contract between Harvey-Cleary Builders and Tysons Corner Hotel I.
16. Electrical Drawing E 0.01, Revision #4 dated 3-29-2013, H-CCD-002.

Publications & Speeches in the last 10 years

Mr. Nehmer has authored the following publications and presented the following speeches over the past 10 years:

“Blurred Vision: Understanding the Hotel Tier Differences”

NYU Hospitality Investment Conference, 06/16

“Design to Inspire: Creating the Unexpected”

Hunter Conference, 03/16

“The ROI of Hotel Design”

NATHIC, 11/15

“Ownership Track – Capex Planning”

HICAP, 10/15

“Meeting Artistic Vision, Brand Standards, and Your Budget”

Lodging Conference, 10/15

“ISHC Capex Session”

Canadian Hospitality Investment Conference, 05/15

“Following the Money: Trends in Capex for 2015”

BDWest, 03/15

“Back to the Future – How Capex Spending has Changed and Where it’s Going”

Hunter Conference, 03/15

“Capex – The Good, the Bad, and the Ugly”

ALIS, 01/15

“CapEx 2014: A Study of Capital Expenditures in the Hotel Industry”, 2014

“A Contemporary Frontier: Introducing a New Brand”,

NYU Hospitality Investment Conference, 06/14

“Wellness Reinvented: A Look at IHG’s EVEN Brand”

HD Expo, 05/14

“How to design hotels for wellness tourism”

Hotel News Now, 04/14

“Hospitality Design Trends: Designing for the Business & Leisure Traveler”

China Hotel Investment Conference, 04/14

“PIP, PIP, Hooray!”

Hunter Conference, 03/14

“What to Expect When Embarking on a Renovation Project”

Western Canadian Hotel Investment Conference, 10/13

“Repositioning and Adaptive Reuse”

NYU Hospitality Investment Conference, 06/13

"From Dud to Stud: How to Elevate Your Asset"

Hunter Hotel Conference, 03/13

"Hospitality-Driven Mixed Use Resorts"

Caribbean Hotel Investment Conference Summit, 11/12

"Hospitality New Normal – Are You Ready for It?"

International Hotel Motel & Restaurant Show, 11/12

"Time is Money"

NYU Hospitality Investment Conference, 06/12

"Recession Era Style"

Hunter Conference, 03/12

2011 *Hotel Business* Deal of the Year Judge

"The PIPs are Back: How Property Improvement Plans Affect Your Bottom Line"

NATHIC, 11/11

"Perfecting the Design Team: Understanding the Design Process"

International Design and Development Conference, 06/11

"Capital Expenditures: A Design for Pinching Pennies or Spending Recovery"

NYU Hospitality Investment Conference, 06/11

"Designing in a Recovering Hotel Market"

Hotel News Now, 06/11

"It's All in the Planning"

Hunter Conference, 03/11

"How to Keep Cost Savings in Place on the Upswing"

Distressed Hotel Summit, 11/10

"Branding, Rebranding, and Upscaling Hotel Properties"

SAHIC, 09/10

"If I Had Two Nickels"

Hunter Hotel Conference, 03/10

"Hospitality Leaders State of the Industry"

Inspire Design, 02/10

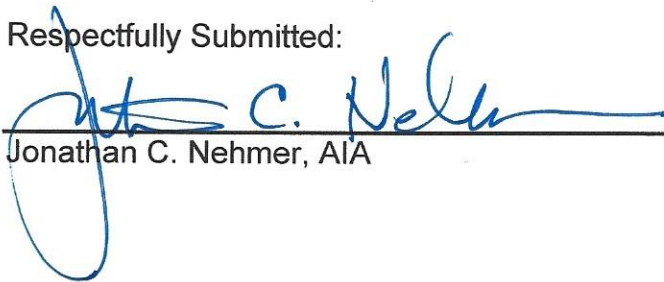
Expert Witness Experience

The following is the list of all cases that Mr. Nehmer has provided expert witness testimony for over the past 10 years.

- Client:** Bickel & Brewer **Date:** July 2010
Description: Jonathan Nehmer conducted research to review the design and drawings prepared by the defendant's design team as well as the design guides issued by Starwood hotels that applied to the property at the time of design and construction. Mr. Nehmer then prepared a report on his findings and provided testimony at trial.
- Client:** Sheehan Phinney Bass + Green, P.A. **Date:** 10/2010
Description: Jonathan Nehmer conducted research and provided his expert testimony at deposition and trial on the construction of a hotel in Cedar Rapids. He provided his expert opinion on if the hotel was built according to brand standards.
- Client:** Neal Wolfe & Associates **Date:** 07/2012
Description: Jonathan Nehmer conducted a site visit and provided an expert witness report on the existing conditions of a historic Chicago hotel including the hotel's FF&E in comparison to the hotel's competition.

End of Report

Respectfully Submitted:



Jonathan C. Nehmer, AIA